IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 26TH NOVEMBER 2007 / 5TH AGRAHAYANA 1929

Crl.MC.No. 3485 of 2007()

CC.7/2007 of SPL.COURT SPE/CBI-II & IV ADDL.SESSIONS COURT, ERNAKULAM

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PETITIONER: 13TH ACCUSED

M.RAYEES, S/O MACKY,
NAZZ 29/1650, KOTTULI P.O.,
KOZHIKODE.

BY ADV. SRI.RAJU JOSEPH

RESPONDENTS: COMPLAINANT

CBI/ACB/KERALA, REPRESENTED BY
ADDL. SP., CBI, COCHIN.

BY ADV. SRI.S.SREEKUMAR, SC FOR CBI
PUBLIC PROSECUTOR SRI.M.S.BREEZ

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 26/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

Crl.M.C.No.3485 of 2007

Dated this the 26th day of November 2007

O R D E R

Against the petitioner, final report has been submitted by the CBI after completing the investigation. Allegations are raised against the petitioner under Section 120B I.P.C and Section 13 of the PC Act. Cognizance has been taken by the learned Special Judge and calender case has been numbered before the learned Special Judge-II for CBI Cases, Ernakulam. The petitioner has already appeared before the learned Magistrate and has been enlarged on bail also. Charges have not been framed so far.

2. The petitioner has come to this court at this juncture with this petition under Section 482 Cr.P.C. The petitioner prays that the proceedings against the petitioner may be quashed invoking the jurisdiction under Section 482 Cr.P.C. Altogether there are 36 accused persons, it is prayed

3. It is certainly for the petitioner to appear before the learned Special Judge and seek discharge under Section 239 Cr.P.C. Ordinarily and normally to claim premature termination

of proceedings, an indictee has to take resort to the provisions relating to discharge under the code. Not that this court lacks jurisdictional competence under Section 482 Cr.P.C to quash the proceedings in the interests of justice but that course can be adopted only in an exceptional case where the interests of justice compellingly demand resort to that course. I repeat that ordinarily and normally the indictees will have to claim premature termination by claiming discharge at the stage of Section 239/240 Cr.P.C.

4. I do not find any compelling reasons which should persuade me to consider the claim for premature termination of the petitioner/13th accused alone separately in a proceedings under Section 482 Cr.P.C. The learned Special Judge will certainly have to consider the question of framing charge. If the petitioner feels that he is entitled for discharge, he can certainly raise that plea before the learned Special Judge and needless to say, the learned Special Judge must consider such plea on merits and take appropriate decision. If the charges are groundless and there is no sufficient reason to proceed further, certainly the claim of the petitioner for premature termination of proceedings against him will have to be considered favourably.

5. In the result, this Criminal Miscellaneous Case is dismissed with the above observations. I may hasten to observe that I have not intended to express any opinion either way on merits on the claim of the petitioner for premature termination of the proceedings against him. I do only take the view that it is not necessary to invoke the powers under Section 482 Cr.P.C in the facts and circumstances of this case.

(R.BASANT, JUDGE)

jsr

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007